IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL CASE No. 6 of 2000
In
COMPANY PETITION No. 67 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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O.L. OF KHODIYAR POTTERY WORKSLTD. - Complainant(s)
Versus
SHRI ACHYUT A. GANPULA & 8 - Accused

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Appearance :

OFFICIAL LIQUIDATOR for Complainant(s) : 1,MR SUDHIR M MEHTA for Complainant(s) : 1,
UNSERVED-EXPIRED (N) for Accused : 1,
M/S THAKKAR ASSOC. for Accused : 2 - 4.
NOTICE NOT RECD BACK for Accused : 3, 8,
MR AMAR N BHATT for Accused : 5,
DELETED for Accused : 6,
UNSERVED-EXPIRED (R) for Accused : 7,
NOTICE UNSERVED for Accused : 9,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 09/01/2007

ORAL JUDGMENT

1. Present complaint/Criminal Case has been filed by the Official Liquidator of Khodiyar Pottery Works Limited (in liquidation) under Section 454 of the Companies Act; 1956 to punish the respondents accused – Ex-Directors of the company in liquidation for not filling the Statement of Affairs as required to be filed within the stipulated time as required under Section 454 of the Companies Act; 1956.

2. It has been submitted in the complaint that on a petition being Company Petition No. 67 of 1995 M/s. Khodiyar Pottery Works Limited was ordered to be wound up by an order dated 17.2.1999 and the complainant was appointed as Official Liquidator. It has also been further submitted in the complaint that at the material time the accused Nos.1 to 9 were the Directors of the company and as such, they were under the statutory obligation to furnish the complainant – Official Liquidator the Statement of Affairs as required under Section 454 of the Companies Act; 1956. It is alleged that the complainant by

its Registered A.D. Notice dated 7.1.2000 addressed to all the accused requested them to prepare and submit the Statement of Affairs as required under Section 454 of the Act. That inspite of the above, the accused did not file the Statement of Affairs and even after giving the accused sufficient time and opportunity, they so far failed and neglected to prepare and submit the Statement of Affairs and failed to do so till the date of filing of the present complaint and therefore, it is requested to pass an appropriate order of punishment and penalty upon the accused under Section 454 of the Companies Act.

3. It is submitted that there is a delay of 1281 days in filing the Statement of Affairs. Relying upon the judgments in case of ***V.P.Singhal, Official Liquidator V/s. Chatrabhujdas Chimanlal & Another*** reported in **86 Company Cases Page – 422**, ***Official Liquidator, Trimurthy Agro-Chemical Ltd. V/s. Niranjan Jayantilal Tolia & Others*** reported in **56 Company Cases Page – 380**

and in case of ***Official Liquidator of Essen Computers Ltd. V/s. Rajendra A. Shah & Others*** reported in **108 Company Cases Page-559,** it is requested to punish the accused/original Directors of the company in liquidation and to impose heavy penalty by further submitting that as per the old Act, per day upto Rs.100/- penalty is required to be imposed.

4. Shri N.K.Pahva, learned advocate appeared on behalf of the accused Nos.2 to 4 and Shri Amar N. Bhatt, learned advocate appeared on behalf of the accused Nos.5 and 8. It is also required to be noted that presence of the accused were secured by issuing Bailable Warrants. Shri Pahva, learned advocate appearing for the accused Nos.2 to 4 has submitted that the Statement of Affairs have been filed on 16.9.2002 and there were no mala-fide intention on the part of the accused in late filing the Statement of Affairs and therefore, it is requested by him to impose minor penalty instead of punishment. He has submitted that penalty be

imposed for a reasonable amount so far as accused Nos.2 to 4 are concerned. Shri Amar N. Bhatt, learned advocate appearing for the accused Nos.5 and 8 has submitted that so far as accused No.5 is concerned, he is aged about 80 years and suffering from various ailments and so far as accused No.8 is concerned, he is also aged person and he is depend upon the pension and therefore, it is requested to impose penalty of reasonable amount.

5. Heard the learned advocates appearing on behalf of the respective parties.

6. It is not in dispute that the company was ordered to be wound up by order dated 17.2.1999 and all the Ex-Directors were required to submit their Statement of Affairs within a period of 21 days as required under Section 454 of the Companies Act; 1956. It is also not in dispute that the Statement of Affairs were not filed by the Ex-Directors. By notice dated 7.1.2000, all the Directors were called upon to submit their

Statement of Affairs, however, till 16.9.2002 the Statement of Affairs were not filed. Even the Statement of Affairs filed were defective. There were some defects, which were cured subsequently and thereafter proper Statement of Affairs came to be filed. Thus, it is admitted that even after the notice dated 7.1.2000, the Statement of Affairs were not filed. Thus, there is a breach of the provisions of Section 454 of the Companies Act so far as all the accused are concerned. Some of the accused came to be deleted as they have expired during the pendency of the present complaint. In view of the fact that there is a breach of provisions of Section 454 of the Companies Act as the Statement of Affairs were not filed within the stipulated time as required, all the accused, more particularly, accused Nos.2 to 4 and 5 and 8 are held guilty for non-compliance of Section 454 of the Companies Act. After having found guilty, an order of punishment/penalty is required to be passed. Shri Pahva, learned advocate appearing for the accused Nos.2 to 4 has submitted that in

the facts and circumstances when the Statement of Affairs were filed subsequently and there was no mala-fide intention on the part of the accused in late filing the Statement of Affairs, it is requested to impose the penalty for minor amount instead of punishing the accused. The punishment provided under Section 454 (5) of the Act is of two years or fine at the rate of Rs.100/- for every day during which the default continues or with both. In the present case, the default continued at least from 7.1.2000 till the date of filing of the Statement of Affairs on 16.9.2002 and according to the Official Liquidator – complainant, there is a delay of 1281 days in filing the Statement of Affairs. The fine for this entire period can be calculated at Rs.100/-per day, which runs into thousand of rupees. However, considering over all picture and conduct of the accused, I do not think that too strict view needs to be taken.

7. For the above reasons, I convict the accused Nos.2 to 4 and 5 and 8 under Sub-section (5) of

Section 454 of the Act and direct the accused Nos.2 to 4 to pay the fine of Rs.20,000/- each and direct the accused Nos.5 and 8 to pay the fine of Rs.5000/- each and in default, to suffer Simple Imprisonment for three months. The accused are directed to deposit the penalty/fine before the Registry of this Court on or before 22nd January, 2007.

8. This Criminal Case is accordingly disposed of.

[M.R.Shah, J.]

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